

that the substantial owner was an active participant under the plan, and the denominator of which is 30. Active participation under a plan commences at the later of the date on which the plan is adopted or becomes effective.

(c) *Phase-in formula when there have been benefit increases.* If there has been a benefit increase under the plan, other than the adoption of the plan, benefits provided by each such increase shall be guaranteed to the extent provided in the following formula: The amount of the guaranteeable benefit increase computed under § 4022.24 multiplied by a fraction not to exceed 1, the numerator of which is the number of full years prior to the termination date that the benefit increase was in effect and during which the substantial owner was an active participant under the plan, and the denominator of which is 30. However, in no event shall the total benefits guaranteed under all such benefit increases exceed the benefits which are guaranteed under paragraph (b) of this section with respect to a plan described therein.

(d) For the purpose of computing the benefits guaranteed under this section, in the case of a substantial owner who becomes an active participant under a plan after a benefit increase (other than the adoption of the plan) has been put into effect, the plan as it exists at the time he commences his participation shall be deemed to be the original plan with respect to him.

[61 FR 34028, July 1, 1996, as amended at 62 FR 67729, Dec. 30, 1997]

§ 4022.27 Effect of tax disqualification.

(a) *General rule.* Except as provided in paragraph (b) of this section, benefits accrued under a plan after the date on which the Secretary of the Treasury or his delegate issues a notice that any trust which is part of the plan no longer meets the requirements of section 401(a) of the Code or that the plan no longer meets the requirements of section 404(a) of the Code or after the date of adoption of a plan amendment that causes the issuance of such a notice shall not be guaranteed under this part.

(b) *Exceptions.* The restriction on the guarantee of benefits set forth in para-

graph (a) of this section shall not apply if:

(1) The Secretary of the Treasury or his delegate issues a notice stating that the original notice referred to in paragraph (a) of this section was erroneous;

(2) The Secretary of the Treasury or his delegate finds that, subsequent to the issuance of the notice referred to in paragraph (a) of this section, appropriate action has been taken with respect to the trust or plan to cause it to meet the requirements of sections 401(a) or 404(a)(2) of the Code, respectively, and issues a subsequent notice stating that the trust or plan meets such requirements; or

(3) The plan amendment is revoked retroactively to its original effective date.

Subpart C—Section 4022(c) Benefits

§ 4022.51 Determination of section 4022(c) benefits in a PPA 2006 bankruptcy termination.

(a) *Amount of unfunded nonguaranteed benefits.* For purposes of this section, and subject to paragraph (b) of this section, a plan's amount of unfunded nonguaranteed benefits means the plan's outstanding amount of benefit liabilities, as defined in section 4001(a)(19) of ERISA, determined as of the plan's termination date. A plan's amount of unfunded nonguaranteed benefits is multiplied by the applicable recovery ratio to determine the aggregate amount to be allocated with respect to participants of the plan under section 4022(c)(1) of ERISA.

(b) *Benefits included in unfunded nonguaranteed benefits.* For purposes of computing benefits under section 4022(c) of ERISA in a PPA 2006 bankruptcy termination, unfunded nonguaranteed benefits are benefits under a plan as of the plan's termination date that are neither guaranteed by PBGC (taking into account section 4022(g) of ERISA) nor funded by the plan's assets (taking into account section 4044(e) of ERISA).

(c) *Determination of recovery ratio.* In a PPA 2006 bankruptcy termination, the recovery ratio under section 4022(c)(3) of ERISA is determined as follows. The

numerator is based on PBGC's recoveries under section 4062, 4063, or 4064, valued as of the plan's (or plans') termination date (or dates). The denominator of the recovery ratio is based on the amount of unfunded benefit liabilities, as defined in section 4001(a)(18) of ERISA, as of the plan's (or plans') termination date (or dates).

[76 FR 34603, June 14, 2011]

Subpart D—Benefit Reductions in Terminating Plans

§ 4022.61 Limitations on benefit payments by plan administrator.

(a) *General.* When § 4041.42 of this chapter requires a plan administrator to reduce benefits, the plan administrator shall limit benefit payments in accordance with this section.

(b) *Accrued benefit at normal retirement.* Except to the extent permitted by paragraph (d) of this section, a plan administrator may not pay that portion of a monthly benefit payable with respect to any participant that exceeds the participant's accrued benefit payable at normal retirement age under the plan. For the purpose of applying this limitation, post-retirement benefit increases, such as cost-of-living adjustments, are not considered to increase a participant's benefit beyond his or her accrued benefit payable at normal retirement age.

(c) *Maximum guaranteeable benefit.* Except to the extent permitted by paragraph (d) of this section, a plan administrator may not pay that portion of a monthly benefit payable with respect to any participant, as limited by paragraph (b) of this section, that exceeds the maximum guaranteeable benefit under section 4022(b)(3)(B) of ERISA and § 4022.22(a)(2) of this part, adjusted for age and benefit form, for the year of the proposed termination date. In a PPA 2006 bankruptcy termination, the maximum guaranteeable benefit is determined as of the bankruptcy filing date, in accordance with §§ 4022.22(b) and 4022.23(g).

(d) *Estimated benefit payments.* A plan administrator shall pay the monthly benefit payable with respect to each participant as determined under

§ 4022.62 or § 4022.63, whichever produces the higher benefit.

(e) *PBGC authority to modify procedures.* In order to avoid abuse of the plan termination insurance system, inequitable treatment of participants and beneficiaries, or the imposition of unreasonable burdens on terminating plans, the PBGC may authorize or direct the use of alternative procedures for determining benefit reductions.

(f) *Examples.* This section is illustrated by the following examples. (For examples addressing issues specific to a PPA 2006 bankruptcy termination, see §§ 4022.21(e), 4022.22(b), and 4022.23(g).)

Example 1. Facts. On October 10, 1992, a plan administrator files with the PBGC a notice of intent to terminate in a distress termination that includes December 31, 1992, as the proposed termination date. A participant who is in pay status on December 31, 1992, has been receiving his accrued benefit of \$2,500 per month under the plan. The benefit is in the form of a joint and survivor annuity (contingent basis) that will pay 50 percent of the participant's benefit amount (*i.e.*, \$1,250 per month) to his surviving spouse following the death of the participant. On December 31, 1992, the participant is age 66, and his wife is age 56.

Benefit reductions. Paragraph (b) of this section requires the plan administrator to cease paying benefits in excess of the accrued benefit payable at normal retirement age. Because the participant is receiving only his accrued benefit, no reduction is required under paragraph (b).

Paragraph (c) of this section requires the plan administrator to cease paying benefits in excess of the maximum guaranteeable benefit, adjusted for age and benefit form in accordance with the provisions of subpart B. The maximum guaranteeable benefit for plans terminating in 1992, the year of the proposed termination date, is \$2,352.27 per month, payable in the form of a single life annuity at age 65. Because the participant is older than age 65, no adjustment is required under § 4022.23(c) based on the annuitant's age factor. The benefit form is a joint and survivor annuity (contingent basis), as defined in § 4022.23(d)(2). The required benefit reduction for this benefit form under § 4022.23(d) is 10 percent. The corresponding adjustment factor is 0.90 (1.00–0.10). The benefit reduction factor to adjust for the age difference between the participant and the beneficiary is computed under § 4022.23(e). In computing the difference in ages, years over 65 years of age are not taken into account. Therefore, the age difference is 9 years (65–56). The required percentage reduction when the beneficiary is 9 years younger than the